

Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
David E. Perka)	File Number: EB-07-CF-0119
Annapolis, Maryland)	
)	NAL/Acct. No.: 200932340001
)	
)	FRN: 0008202053

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: March 27, 2009

By the Acting District Director, Columbia Field Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that David Edward Perka (“Perka”), amateur radio licensee KA3PRB, apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (“Act”),¹ by operating without a license in the Maritime Radio Service and apparently willfully violated Section 333 of the Act by maliciously interfering with the United States Coast Guard (“USCG”) on the International Distress, Safety and Calling Channel in Annapolis, Maryland. We conclude, pursuant to Section 503(b) of the Act,² that Mr. Perka is apparently liable for a forfeiture in the amount of seventeen thousand dollars (\$17,000).

II. BACKGROUND

2. On April 6, 2008, the Commission’s Columbia Field Office (“Columbia Office”) was notified by the FCC Communications and Crisis Management Center that the U.S. Coast Guard (“USCG”) in Annapolis, Maryland, was experiencing interference intermittently throughout the day to the frequency 156.800 MHz, which is the international radiotelephone distress, urgency, safety, call and reply frequency for ship, public and private coast stations, typically referred to as “Marine Channel 16”. The Columbia Office’s District Director called the USCG and learned that the intruder, a male individual, had been on Marine Channel 16 intermittently since 5:00 a.m., harassing the USCG and interfering with its communications, including safety bulletins. The interfering transmissions consisted of the subject speaking as well as tones from a Dual-Tone Multi-Frequency (DTMF) keypad. There had been a five hour break between the intruder’s early-morning transmissions and approximately 4:30 p.m. when the USCG contacted the FCC. The District Director advised the USCG that the Columbia Office would investigate the incident that evening.

3. At approximately 6:00 p.m., FCC agents arrived in Annapolis, Maryland and began monitoring Marine Channel 16. The subject was not heard when the agents first arrived in Annapolis, but at approximately 6:20 p.m., the agents heard very weak transmissions from what they believed to be the

¹ 47 U.S.C. §§ 301, 333.

² 47 U.S.C. § 503(b).

Federal Communications Commission

subject. The agents repositioned their direction-finding (DF) vehicle to the area indicated by the DF bearings and shortly afterward, at about 6:45 p.m., the agents heard short clicks that were stronger than the previous transmissions, but the transmissions stopped and did not return.

4. At approximately 8:00 p.m., having not heard activity for over an hour, the agents departed the area. While leaving the area, the agents continued to monitor Marine Channel 16 in the DF vehicle. At approximately 8:20 p.m., the agents heard the USCG responding to transmissions that seemed to be the same subject, based on the nature of the USCG radio operator's response. Within a minute, the agents received a phone call from the USCG that the subject had resumed operating on Marine Channel 16.

5. The agents proceeded back to the area they had identified earlier based on bearings and signal strength. At approximately 8:40 p.m., as the agents reached the area of interest, they heard the subject on Marine Channel 16 continue to converse with the USCG radio operator about vacating the safety calling channel. As the subject continued to transmit, the agents, using direction-finding techniques, traced the signal to a neighborhood of town homes near the intersection of Forest Drive and Hilltop Lane, about three miles from where they last heard the subject at 6:45 p.m. Once inside the town home community, the agents were able to narrow the source of the signal to the middle units of a specific row of town homes on Heritage Court, specifically 51, 53 and 55 Heritage Court. No antennas were visible. While attempting to identify the source of the interfering signal, the agents heard the subject make threats to the USCG telling them to "move their boats" and related statements. At approximately 9:00 p.m., the subject informed the USCG that he was not going to make anymore transmissions for the night. Shortly after that, he ceased operating and the DF bearing could not be further refined to a specific town home unit. Prior to leaving the area, the agents searched for any visible antennas, of which there were none. The agents also recorded the license plate numbers of the cars parked near 51, 53 and 55 Heritage Court, one of which agents later determined was associated with Perka.³

6. On April 7, 2008, agents returned to the area of interest and inspected the block of town homes (51, 53 and 55 Heritage Court, Annapolis, MD) for further evidence of an antenna. Again, no outside antennas were visible. Most of the residents' vehicles were gone. After checking the area, the agents pulled into a shopping area to wait and listen for any activity on Marine Channel 16. At approximately 12:00 p.m., the agents heard a tone come across the speaker that was strong, indicating the signal was very near. The tone lasted for about 30 seconds, giving the agents enough time to DF the signal. The agents captured a bearing indicating that the signal was coming from the direction of the neighborhood where the town homes were located the previous evening. While traveling in the direction of the town homes, the DF in the FCC vehicle indicated that the signal was coming from behind the FCC vehicle and was growing stronger, suggesting a mobile operator. Shortly thereafter, the signal strength peaked and the bearing indication rotated around to indicate the source was now in front of the FCC vehicle. The car had a magnetic whip antenna mounted on the roof. Based on the license plate, agents were able to determine that this car was one of the cars observed in the parking lot in front of the town homes the previous evening. The tones were DTMF tones, similar to tones heard in some of the disruptive transmissions recorded by the USCG on April 6, 2008.

7. The agents followed the suspect to a local liquor store, the Annapolis Wine & Spirits, located at 1307 Forest Drive in Annapolis. The agents contacted the USCG special agent to advise him that they had located the subject. While the subject was in the store, one of the agents stepped out of the car and observed amateur radio equipment on the center console of the subject's car. The agents waited for the subject to return to his car for questioning. When the subject returned to his car, the FCC agent approached him for questioning about his radio. The subject identified himself as David E. Perka and produced a driver's license, which indicated that he resided at 51 Heritage Court. In response to questions

³ See *infra* at para. 7.

from the FCC agents, Perka admitted to transmitting on Marine Channel 16 and harassing the USCG on April 6, 2008. Perka claimed he wanted the USCG to “move their boats.”

8. When the USCG special agent arrived in the parking lot of the liquor store, he proceeded to interview the subject with the FCC agents. Perka repeated to the USCG special agent what he told the FCC agents regarding his transmissions on Marine Channel 16 both that day in his car and the day before, stating that he wanted the USCG to “move their boats.”⁴ Perka voluntarily turned over the radio in his car to the USCG special agent.⁵

III. DISCUSSION

9. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term “willful” as used in Section 503(b) of the Act has been interpreted to mean simply that the acts or omissions are committed knowingly.⁶ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁷

10. Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license granted under the provisions of the Act. Section 80.13 of the Commission’s Rules provides generally that “stations in the maritime service must be licensed by the FCC either individually or by fleet.”⁸ As described above, FCC agents determined that, on April 6 and April 7, 2008, Perka operated on Marine Channel 16. Although Perka holds an amateur license, he does not hold a license to operate in the Maritime Service. Because Perka admitted to FCC agents and to the USCG special agent that he operated on Marine Channel 16, we find that Perka willfully violated Section 301 of the Act. The violation occurred on more than one day; therefore, the violation was repeated.

11. Section 333 of the Act states that no person shall willfully or maliciously interfere with, or cause interference to, any radio communications of any station licensed or authorized by or under this Act or operated by the United States Government. The legislative history for Section 333 identifies willful and malicious interference as “intentional jamming, deliberate transmission on top of the transmissions of authorized users already using specific frequencies in order to obstruct their communications, repeated interruptions, and the use and transmission of whistles, tapes, records, or other types of noisemaking

⁴ Because of possible evidence of alcohol use, the Annapolis police were contacted and they arrested Perka for having an open alcohol container in his car.

⁵ On May 23, 2008, the USCG interviewed Perka again. During that interview, Perka apologized for making the “broadcasts” and voluntarily relinquished all rights to the radio that he had turned over to the USCG on April 7, 2008.

⁶ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act....” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁷ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”

⁸ 47 C.F.R. § 80.13. Although there are certain circumstances under which a ship station is licensed by rule, the instant case does not involve a ship station and therefore the exceptions to the individual license requirement are not applicable. See 47 C.F.R. § 80.13(c).

devices to interfere with the communications or radio signals of other stations.”⁹ On April 6, 2008, the USCG reported to the Columbia Office that an unknown subject was interfering with its communications on Marine Channel 16, including safety bulletins, by using harassing language and activating DTMF tones. Later that evening, FCC agents heard the subject’s harassing transmissions on Marine Channel 16 and, using mobile direction finding equipment, traced the source of the signal to a group of town homes, one of which FCC agents later determined was Perka’s residence. During an interview with FCC agents and a USCG special agent, on April 7, 2008, Perka admitted to transmitting on Marine Channel 16 and harassing the USCG the previous day. Because Perka admitted to knowingly interfering with USCG communications, we find that he willfully violated Section 333 of the Act.

12. In sum, based on the evidence before us, we find that Perka apparently, willfully and repeatedly operated in the Maritime Radio Service without a license in violation of Section 301 of the Act and apparently willfully violated Section 333 of the Act by maliciously interfering with USCG communications on Marine Channel 16.

13. Pursuant to *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, (“*Forfeiture Policy Statement*”), and Section 1.80 of the Rules, the base forfeiture amount for operation without an instrument of authorization is \$10,000 and the base forfeiture amount for interference is \$7,000.¹⁰ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.¹¹ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Perka is apparently liable for a \$17,000 forfeiture.¹²

IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, David E. Perka is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of seventeen thousand dollars (\$17,000) for violations of Sections 301 and 333 of the Act.¹³

15. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, David E. Perka **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

16. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance

⁹ H.R. Rep. No. 101-316, at 13 (1989).

¹⁰ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

¹¹ 47 U.S.C. § 503(b)(2)(E).

¹² We warn Perka that any future misconduct with radio transmission equipment could result in more serious sanctions, including a license revocation proceeding with regard to his amateur license.

¹³ 47 U.S.C. §§ 301, 333.

Federal Communications Commission

Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account Number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. If payment is made, Perka should send electronic notification on the date said payment is made to NER-Response@fcc.gov.

17. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Northeast Region, Columbia Field Office, 9200 Farm House Lane, Columbia, Maryland, 21046 and must include the NAL/Account Number referenced in the caption.

18. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

19. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to David Edward Perka **at his address of record**.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Caine
Acting District Director
Columbia Field Office
Northeast Region
Enforcement Bureau